CF0000057844

(2)

CRA 1598 94

XII-188/(Jail)
C.J.P.R.—5,000-9-81

Division Bench (Criminal)

APPEAL OF PRISONER

No. 215 Name नरेश उर्फ प्रेमसाय

Father's name प्रेमसाय

Residence बोदेसरपुर Age 27

Sentenced to आजीवन कारावास on 29/9/94

Under section 302 भादवि by द्वितीय अपर सत्र न्यायाधीश, रायगढ़

it is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 29/9/94

2 Date of which copy received 18/11/94

3 Date on which Appeal sent 20/11/94

4 Whether the prisoner wishes to be represented or not – Yes/No.

No. 215 Name नरेश उर्फ प्रेमसाय

Continued in जेल Jail रायगढ़

No. 1062 dated 20/11/94 198

Forwarded to the CHIEF JUDICIAL MAGISTRATE Rgarh

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

Superintendent Central/ Distt./ Sub-Jail

Date of receipt in C. J. M.'S Office

Date of receipt of record to accompany

Memo of Appeal of the Appeliate Court.

No. Q/CJM Rgarh (MP) Dated 20/11/94 198

Forwarded to the Submitted to Learned Addl. Rgarh

C.J.Magistrate

(C. B. Bajpai)
Chief Judicial Magistrate
RAIGARH (M P)

Date of receipt in Appliate Court

(P.T.O.)

(31)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A. 1598/94 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

1-2-2006

Mrs. Savita Tiwari, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. M.P.S. Bhatia, Panel Lawyer for the State/respondent.

Oral judgment dictated on Dais.

Per L.C. Bhadoo, J: -

Appellant Naresh has preferred this criminal appeal under Section 374 (2) of the Cr.P.C. through the Superintendent, Sub Jail, Jashpurnagar, questioning the legality of the judgment of conviction and order of sentence dated 29-9-1994 passed by the Additional Sessions Judge, Jashpurnagar, in Sessions Trial No.70/94, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for committing the murder of Sarveshwar Rai convicted him under Section 302 of the I.P.C. and sentenced to undergo imprisonment for life.

The prosecution case, in brief, is that Viphalram (PW-1) lodged the report Ex.P-1 in Police Station: Narainpur on 12-2-1994 to the effect that on 11-2-1994 at about 7 p.m. Bhutkaram came to his house and informed that Naresh, Tanku & Baale have attacked his nephew Sarveshwar with a knife. On hearing this, he along with his wife Bihanibai went to the house of Sarveshwar and saw that the intestine of Sarveshwar was coming out on account of the stab injury on stomach and Sarveshwar died. On enquiry from his sister-in-law Kuntibai, she informed that Naresh has stabbed with a

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A.1598/94 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

knife and the incident was witnessed by Kuntibai & Ropnibai. After registration of the case, the Investigating Officer left for the place where the body of Sarveshwar was lying and after giving notice to the Panchas, he prepared the Panchnama of the body of Sarveshwar Ex.P-3. He took into possession plain soil and blood stained soil under Ex.P-4. While in police custody, the accused gave memorandum under Section 27 of the Indian Evidence Act (Ex.P-5) and in pursuance of that memorandum he got recovered the knife under Ex.P-6. The body of Sarveshwar was sent for post-mortem examination to the Primary Health Centre, Kunkuri, where Dr. S. Toppo conducted post-mortem on the body of Sarveshwar and prepared the post-mortem report Ex.P-7.

After completion of investigation, charge sheet was filed against accused/appellant Naresh, Jaldhar & Baleshwar in the Court of Judicial Magistrate, First Class, Jashpurnagar, who in turn committed the case to the Sessions Judge, Raigarh, from where learned Additional Sessions Judge, Jashpurnagar, received the case on transfer for trial.

The prosecution in order to establish charges against the accused persons examined 11 witnesses. Statements of the accused persons under Section 313 of the Cr.P.C. have also been recorded in which they denied the prosecution evidence appearing against them.

After hearing the arguments of Additional Public Prosecutor and counsel for the accused persons, learned Additional Sessions Judge convicted the accused/appellant as mentioned in para 1 of this judgment and also convicted and sentenced accused Jaldhar under Section 302 read with Section 34 of the I.P.C., however, acquitted accused Baleshwar. Accused

[पीछे देखिये

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A. 1598/94 सन् ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

~~Jaldhar has filed a separate appeal, however, he died during the pendency of~~ that appeal and therefore, that appeal has ~~become~~ abated.

We have heard Mrs. Savita Tiwari, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor with Mr. M.P.S. Bhatia, learned Panel Lawyer on behalf of the State/respondent.

The homicidal death of Sarveshwar is not in dispute. As far as the involvement of the accused/appellant in committing the murder of Sarveshwar is concerned, the conviction rests on the evidence of Ropnibai (PW-2), wife of the deceased. In the examination-in-chief, she has stated that on the fateful day at about 7 p.m. she along with her husband went to attend the call of nature. When they were returning, accused Naresh stabbed with a knife in the stomach of her husband and accused Jaldhar caught hold of her. On account of the stab injury, her husband fell down and she raised scream, hearing her scream his mother-in-law & father-in-law came to the scene and they took him to the residence. However, in cross-examination, she has not been able to state that the crime in question was witnessed by her. She has stated that in order to attend the call of nature, she went towards south side, whereas, Sarveshwar went towards west side. When she was returning after attending the call of nature, Sarveshwar was also returning after attending the call of nature, she met Sarveshwar and saw that he was holding his stomach. She was able to take Sarveshwar to her residence with great difficulty. She saw that her husband's intestine was coming out from the stomach, Sarveshwar was not able to talk, he became unconscious and the villagers came there.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A.1598/94 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

From the above evidence, it appears that the crime in question was not witnessed by her. She came to know about the fact of stabbing only when she met her husband and saw that he was holding his stomach. She took her husband to the residence, there, she saw that the intestine was coming out from the stomach.

Kuntibai (PW-3), mother of the deceased and mother-in-law of Ropnibai (PW-2) has stated in her evidence that she came to know about stabbing by the accused on being told by Ropnibai (PW-2). As Ropnibai (PW-2) has not been able to establish that she witnessed the crime in question, therefore, the evidence of Kuntibai (PW-3) automatically becomes doubtful and does not inspire confidence of the Court. There is no other eyewitness in the case.

As far as the recovery of knife is concerned, even though the Forensic Science Laboratory's report Ex.P-12 has been filed in which it has been mentioned that the knife in question was found stained with blood, but in order to connect the stab injury with the knife in question which was found on the stomach of Sarveshwar, there is no Serologist's report that the knife in question was stained with human blood, that too with the blood group of deceased Sarveshwar. Therefore, from the knife also the accused cannot be connected with the murder of Sarveshwar.

For the foregoing reasons, finding of the trial Court convicting the accused/appellant for committing the murder of Sarveshwar cannot be sustained.

[पीछे देखिये

XI-HC-22

(35)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A.1598/94 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	In the result, the appeal succeeds and the same is allowed. Conviction and sentence awarded to the accused/appellant under Section 302 of the I.P.C. are set aside. The appellant is acquitted of charge under Section 302 of the I.P.C. He be set at liberty forthwith, if not required in any other case. In view of this order, M.(Cri.)P.No.1192/2003, I.A.Nos.1055/2003 & 2313/2005 stand disposed of. Parties are entitled for certified copy of this order. Sd/- L.C.BHADOO Judge	Sd/- Dhirendra Mishra Judge